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JAMES H. McKENNEY,
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No. 110.

Brief of Michie for D. C.

No. ~~304~~ 110

Filed Nov. 14, 1900.

Supreme Court of the United States

OCTOBER TERM, 1900.

THE CINCINNATI STREET RAILWAY COMPANY,

Plaintiff in Error,

versus

CHARLES B. SNELL,

Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

Brief for Defendant in Error.

JOHN W. WOLFE,
THOS. L. MICHIE,
For Defendant in Error.

The Court Index Press, Cincinnati, Ohio.

Supreme Court of the United States

OCTOBER TERM, 1900.

THE CINCINNATI STREET RAILWAY COMPANY,
Plaintiff in Error,

No. 364. *vs.*

CHARLES B. SNELL,
Defendant in Error.

In Error to the Supreme Court of the State of Ohio.

Brief for Defendant in Error.

We have not been furnished with a copy of the brief of the plaintiff in error and will confine our efforts to showing that the decision of the Supreme Court of Ohio in this case is not in conflict with the Constitution of the United States and particularly with Article 14 in amendment thereof, which is the assignment of error made by the plaintiff in error.

We cite a few authorities showing that Section 5033 of the Revised Statutes of Ohio is not unconstitutional, in that it does not impose a *penalty*, neither is it *class legislation*, but merely furnishes a rule applicable to all parties similarly situated, and coming within the terms of its provision, by

which to guaranty to every one a fair trial free from all local influences.

There is no presumption that one court created by the laws of the state of Ohio will not give just as fair a trial as any other court in the same state. This court has always leaned to the construction of state statutes by the courts of last resort of the state. "But in determining whether the Legislature in a particular enactment has passed the limits of its constitutional authority, every reasonable presumption must be indulged in favor of the validity of such enactment. It must be regarded as valid unless it can be clearly shown to be in conflict with the Constitution. It is a well settled rule of constitutional exposition that if a statute may or may not be, according to circumstances, within the limits of legislative authority, the existence of the circumstances necessary to support it must be presumed."

Sweet v. *Rechel*, 159 U. S., 380–392.
Pressler v. *Illinois*, 116 U. S., 252, 269.

The 14th Amendment does not enlarge the privileges or immunities of a citizen of the United States, but furnishes a guaranty for existing privileges and immunities and prohibits the state from abridging them.

Bradwell v. *The State*, 16 Wall, 130.
In re Lockwood, Petitioner, 154 U. S., 116.

The 14th Amendment does not profess to secure to all persons in the United States the benefit of the same laws and the same remedies. Great diversity in these respects may exist in two states separated by an imaginary line. On one side of this line there may be a right of trial by jury, and on the other side no such right. Each state prescribes its own modes of judicial proceeding.

Missouri v. *Lewis*, 101 U. S., 22, 31.

There is no constitutional objection to legislation that is special in its character. A statute abolishing the defense

of co-servant in railway injuries, does not deny to railroads the equal protection of the laws.

Missouri Ry. Co v. *Mackey*, 127 U. S., 205, 209.

To same effect see

Missouri Pac. Ry. Co. v. *Humes*, 115 U. S., 512.
Minn. R. Co. v. *Beckwith*, 129 U. S., 26.
Minn. & St. L. Ry. v. *Emmons*, 149 U. S., 364.
St. Louis & San. Fran. Ry. Co. v. *Mathews*, 165 U. S., 1.
Hayes v. *Missouri*, 120 U. S., 68.
Bell's Gap Ry. Co. v. *Pennsylvania*, 134 U. S., 237.
Atchinson, Topeka & Santa Fe R. R. Co. v. *Mathews*, 174 U. S., 96.

In this last case from a careful perusal of the minority opinion of the court, the law seems to be concededly settled in favor of the validity of Section 5033, Revised Statutes of Ohio. See, also,

Waters-Pierce Oil Company v. *Texas*, 177 U. S., 28.

In *Snell* v. *the Cincinnati Street Railway Company*, 60 Ohio State, 256, the Supreme Court of Ohio held that Section 5033 of the Revised Statutes of Ohio is not in conflict with the State or Federal Constitution. The very able opinion of our Supreme Court in this case by Williams, J., is found commencing on page 266, 60 Ohio State, and is a more learned and stronger argument than we feel able to attempt. Our court has ably discussed the very question raised in this court, and we are well content to rest our cause upon this solid foundation.

Respectfully submitted,

JOHN W. WOLFE,
THOS. L. MICHIE,
For Defendant in Error.